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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

AUG 11 1998

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-115
Telecommunications Act of 1996	)	
	)	
Telecommunications Carriers' Use	)	
of Customer Proprietary Network	)	
Information and Other Customer	)	
Information	)	
_____	)	

COMMENTS OF AT&T CORP.

Pursuant to the Commission's Public Notice, DA 98-1582, released August 7, 1998 ("Notice"), AT&T Corp. ("AT&T") submits these comments on the waiver petition filed by the Connecticut Department of Public Utility Control ("DPUC") in this proceeding. DPUC seeks a waiver of certain rules adopted by the FCC under Section 222 of the Communications Act regarding the disclosure of Customer Proprietary Network Information ("CPNI").<sup>1</sup> DPUC (at 2) contends that these rules would prohibit the transfer of

<sup>1</sup> Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 98-27, released February 26, 1998 ("CPNI Order" and "Further Notice," respectively), published in 63 Fed. Reg. 20326 (April 24, 1998).

CPNI without affirmative consent when a customer switches local carriers, thus frustrating DPUC's ability to implement the Local Exchange Election Process in Connecticut.

AT&T believes that a waiver is unnecessary for the incumbent local exchange carrier ("ILEC"), in this case SNET, to transfer CPNI to the follow-on competitive local exchange carrier ("CLEC") a customer has chosen to provide local service. The Commission should thus clarify that where a customer PICS a new entrant to serve as its local carrier, whether through affirmative balloting or through allocation after having failed to respond to the ballot, the ILEC is permitted to transfer the customer's service record to the follow-on carrier that will provide service to the customer.

**THE COMMISSION'S RULES DO NOT PROHIBIT AN INCUMBENT LEC FROM DISCLOSING CPNI TO A CARRIER THAT WILL PROVIDE FOLLOW-ON LOCAL SERVICE TO THE CUSTOMER.**

In Connecticut, the DPUC has approved the restructuring of SNET into a wholesale provider and retail provider of local service, and, as part of this process, it has adopted a balloting process to allow all current SNET customers to choose a new local service provider. In the first ballot, customers will be provided a list of all eligible CLECs, information on each CLEC, and instructions on how to choose a CLEC. When the independent ballot administrator confirms that a customer has chosen a particular CLEC, SNET must provide the CPNI information to the chosen CLEC. During the second ballot, customers

failing on the first ballot to have chosen a CLEC will be allocated to a participating CLEC with the option to select a different local provider. Those customers that do not select a CLEC on the second ballot will remain with the allocated CLEC and the CPNI information will be transferred to that CLEC. DPUC at 2-3.

DPUC contends that it will not be possible to include a lengthy CPNI notice in the balloting process. In all events, DPUC expects that up to 40% of customers will not respond to the ballot and, as a result, will be assigned a CLEC. In these circumstances, DPUC contends that customers will not have given their consent to transfer CPNI to the follow-on carrier and therefore a waiver of Sections 64.2007(f)(2)(iii) and (v) of the Commission's rules is required.<sup>2</sup> DPUC at 3.

Although AT&T has no objection to the result sought by DPUC (that is, the transfer of CPNI to a follow-on

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<sup>2</sup> These sections provide, respectively, that (iii) "the notification must specify the types of information that constitute CPNI and the specific entities that will receive the CPNI, describe the purposes for which CPNI will be used, and inform the customer of his or her right to disapprove those uses, and deny or withdraw access to CPNI at any time," and (v) "if written notification is provided, the notice must be clearly legible, use sufficiently large type, and be placed in an area so as to be readily apparent to a customer." Properly construed, these rules would not require a detailed CPNI notice on the facts here. At most, they would require the DPUC ballot to include a statement that the local service provider that you select or is assigned to you will be provided a copy of your customer service record so that it may provide local service to you.

LEC), AT&T disagrees with the need for a waiver in the circumstances outlined in DPUC's petition. In the CPNI Order (para. 84), the Commission held that Section 222(c)(1) does not prohibit a carrier from disclosing CPNI so that the new carrier can initiate service to the customer. Indeed, the Commission observed that a LEC may be required to disclose a customer service record upon oral approval of a customer as part of the LEC's obligations under Section 251(c)(3) (*provision of service using network elements*) and Section 251(c)(4) (*provision of local service via resale*) and that a failure to disclose in these circumstances could constitute an unreasonable practice under Section 201(b).

Given these rulings, it would appear that where, as in Connecticut, a customer is balloted and PICS a particular CLEC as its follow-on carrier, SNET is not only permitted, but required, to transfer the CPNI. By selecting a new carrier, the customer has consented to the transfer of its CPNI or customer service record so that the new carrier may initiate service.

Similarly, customers who fail to choose a particular CLEC as their follow-on carrier through the DPUC balloting process will have been advised that their failure to make a selection will result in their being assigned to a new local carrier. By failing to respond to the ballot, the customer has impliedly consented to this assignment. Consistent with the Commission's view that the ILEC is not

prohibited from disclosing CPNI under 222(c)(1) where a customer has PIC'd a new carrier (and may be obligated to do so under Section 251), it follows that where a customer foregoes its opportunity to select a new carrier and thus consents to the assignment of a CLEC, the CPNI may likewise be disclosed to the designated carrier so that it may provide service to the customer.

In each of these situations, the authorization (e.g., written response to a ballot, oral customer authorization with third-party verification, or allocation of a customer who fails to respond to a ballot) that satisfies the transfer of service requirements from the incumbent LEC to the CLEC is likewise sufficient to transfer the customer information from the incumbent LEC to the CLEC. This is essential because the CLEC must be able to verify immediately the information that the customer provides to ensure that all systems, including the 911 public safety system, are correctly populated.<sup>3</sup> Moreover, in this situation, the CLEC which the customer has selected or to which it has been assigned is not seeking general CPNI

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<sup>3</sup> Moreover, CLECs must be able to grant special customer exemptions (e.g., blind, disabled), create accurate entries in emergency data bases and directory assistance, and provide service transition intervals that are as seamless and timely as those that the incumbent LEC would provide to initiate service to its own customers. This is true whether the customer affirmatively selects the CLEC through a DPUC-initiated balloting process, or whether the customer is assigned to the CLEC by failing to affirmatively select a local carrier.

approval to allow use of CPNI for out-of-category marketing. Thus, there is no conceivable basis for the full recitation of rights that a carrier is required to provide when seeking CPNI approval for marketing initiatives.<sup>4</sup>

In short, as the Commission has already found, "although an incumbent carrier is not required to disclose CPNI pursuant to section 222(d)(1) or section 222(c)(2), absent an affirmative written request, local exchange carriers may need to disclose CPNI upon the oral approval of the customer to a competing carrier prior to its commencement of service as part of the LEC's obligations under sections 251(c)(3) and (c)(4). In this way, section 222(c)(1) permits any sharing of customer records necessary for the provision of services by a competitive carrier. . . ." *CPNI Order*, para. 84. Although the Commission did not specifically address the issue of customers who are allocated to a CLEC (rather than respond to a written ballot or oral solicitation), AT&T believes that the Commission's holding recognizes the need to transfer customer information for the limited purpose of providing service and that an approval to do so is implicit

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<sup>4</sup> Should the CLEC seek general CPNI approval from the customer permitting it to use CPNI for out-of-category marketing, it would typically initiate the CPNI solicitation approval process as part of the welcome package after the customer's local PIC change has already been implemented. It is at this point that the full CPNI notice of rights should be provided to the customer so

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in the customer's decision not to affirmatively select a carrier as part of the balloting process.

**CONCLUSION**

For these reasons, the Commission should clarify that the waiver requested by DPUC is unnecessary and that CPNI may be transferred from the ILEC (SNET) to the CLEC that will provide follow-on local service to a customer, whether based on the customer's affirmative selection of the particular CLEC or on the allocation of a customer to a carrier, after the customer fails to respond to a carrier selection ballot.

Respectfully submitted,

AT&T CORP.

By

*Judy Sello*

Mark C. Rosenblum  
Judy Sello

Room 3245I1  
295 North Maple Avenue  
Basking Ridge, New Jersey 07920  
(908) 221-8984

Its Attorneys

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(footnote continued from previous page)

that the customer can affirmatively consent to the marketing use of CPNI, if he or she so chooses.

CERTIFICATE OF SERVICE

I, Ann Marie Abrahamson, do hereby certify that on this 24th day of August, 1998, a copy of the foregoing "Comments of AT&T Corp." was served by U.S. first class mail, postage prepaid, on the parties listed below.

Donald W. Downes  
Glenn Arthur  
Jack R. Goldberg  
John W. Betkoski, III  
Linda Kelly Arnold  
Connecticut Department of  
Public Utility Control  
Ten Franklin Square  
New Britain, CT 06051

  
Ann Marie Abrahamson